

II. General Remarks Concerning This Response

Claims 1-48 are currently pending. In this response, claims 1-9, 12-25, 28-41, and 44-48 have been amended; no claims have been added; and no claims have been canceled. Reconsideration of the claims is requested.

In response to the rejection under 35 U.S.C. § 112, ¶ 2, Applicant has changed "and/or" to "or" throughout the claims.

In response to the objection to dependent claims 16, 32, and 48, Applicant has rewritten the claims in independent form to include the elements of the parent or hierarchically superior claims as indicated by the Office action to bring them into allowable form.

III. 35 U.S.C. § 102(e)—Anticipation—McKinnon et al.

The Office action has rejected claims 1-10, 17-26, and 33-42 under 35 U.S.C. § 102(e) as anticipated by McKinnon, III et al., "Solicitations for Allocations of Access Across a Shared Communications Systems", U.S. Patent Application Publication Number US 2002/0129143 A1, filed 03/07/2001, published on 09/12/2002. This rejection is respectfully traversed.

Independent claims 1, 17, and 33 have been amended to include at least one feature that is not disclosed in McKinnon, III et al.. McKinnon, III et al. discloses the prediction of bandwidth usage at the endpoint device level, more specifically, with respect to cable modems (CM's), not with respect to particular users or with respect to particular applications. In contrast, the present invention can establish a bandwidth history comprising bandwidth usage data associated with multiple entities within the distributed data processing system, wherein an entity can be a user or an application.

In addition, the amended dependent claims now recite the usage of packet snoopers that are deployed through a network to perform the packet snooping activities. In contrast, in the system of McKinnon, III et al., the cable modems or similar devices are hardwired devices that can be only commanded to collect bandwidth data with respect to themselves. With the present invention, any device within the distributed framework can accept application action objects that can be flexibly programmed to perform a variety of operations, including packet snooping; in this manner, the packet snoopers are sent to the devices rather than relying on functionality that is already within the cable modems or other devices.

McKinnon, III et al. clearly does not disclose features as required by the language of the amended claims of the present application. As stated at MPEP § 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Hence, for this and other reasons, McKinnon, III et al. cannot be used as an anticipatory reference, and the rejections of the claims have been overcome, whereby Applicant requests the withdrawal of the rejections.

IV. 35 U.S.C. § 103(a)—Obviousness—McKinnon in view of Newberg

The Office action has rejected claims 11-15, 27-31, and 43-47 under 35 U.S.C. § 103(a) as unpatentable over McKinnon, III et al. in view of Newberg et al., "Method and Apparatus for Determining and Reserving Bandwidth for Transmitting Delay-Sensitive Streaming Data Over a Radio Frequency Channel", U.S. Patent Application Publication US 2002/0093983 A1, filed 01/16/2001, published on 07/18/2002. This rejection is traversed.

As noted above, the claims have been amended to include at least one feature that is not disclosed in McKinnon, III et al. nor Newberg et al.. Hence, a hypothetical combination of McKinnon, III et al. and Newberg et al. fails to teach the features of the amended claims. Hence, for this and other reasons, McKinnon, III et al. and Newberg et al. cannot be used in an obviousness rejection, whereby Applicant requests the withdrawal of the rejections.

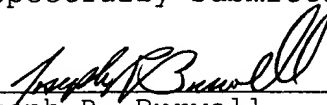
V. **Conclusion**

It is respectfully urged that the present application is patentable, and Applicant kindly requests a Notice of Allowance.

For any other outstanding matters or issues, the examiner is urged to call or fax the below-listed telephone numbers to expedite the prosecution and examination of this application.

DATE: February 3, 2005

Respectfully submitted,



Joseph R. Burwell
Reg. No. 44,468
ATTORNEY FOR APPLICANT

Law Office of Joseph R. Burwell
P.O. Box 28022
Austin, Texas 78755
Voice: 866-728-3688 (866-PATENT8)
Fax: 866-728-3680 (866-PATENT0)
Email: joe@burwell.biz